IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.388 OF 2007
IN
ARBITRATION PETITION NO.140 OF 2007

Mahendra N. Thakkar
of Mumbai Indian Inhabitant
residing at 133/134,
Chandramani, 701/702,
7th Floor, Telang
X Road No.3, Matunga,
Mumbai-400 019. .... Appellant

- Versus -

1. Jayesh M. Gandhi
of Mumbai Indian Inhabitant
having his office at
Universal Insurance
Building, Sir P.M.Road,
Fort, Mumbai-400 001.

2. Vinay D. Balse
of Mumbai Indian Inhabitant
having his office at
Universal Insurance
Building, Sir P.M.Road,
Fort, Mumbai-400 001.

3. S.N. Shivakumar
of Delhi Indian Inhabitant
having his office at E/7/14
Vasant Vihar, New Delhi -
110 065.

4. Yogendra N. Thakkar
of Mumbai Indian Inhabitant
residing at 133/134,
Chandramani, 701/702,
7th Floor, Telang
X Road No.3, Matunga,
Mumbai-400 019. .... Respondents

Sarvasri Mahendra Shah, Senior Advocate,
with H. Toor i/b M/s. Kumana & Co. for
the Appellant.

Shri D.D. Madon, Senior Advocate i/b
M/s. Kanga & Co. for the Respondent
Nos.1 to 3.

Shri N.C. Parekh with Ms Poladia i/b
M/s. Mansukhlal Hiralal & Co. for the
Respondent No.4.

CORAM: R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATED: JUNE 14, 2007

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. Admit. The learned Advocates appearing on behalf of the respective respondents waive service. By consent, heard finally.

2. The appellant challenges the order dated 3-5-2007 passed in Arbitration Petition No.140 of 2007.

3. The appellant had taken out Arbitration Petition No.140 of 2007 seeking the following reliefs:

> "(a) pending the hearing and final disposal of the arbitration, the Respondents, their servants and agents be restrained by an order and injunction of this Hon'ble Court in any manner restraining the Petitioner from acting as the partner of the said partnership firm M/s. N.M. Raiji & Co. including (i) occupying his office cabin, (ii) attending the day to day work of the

partnership firm, (iii) attending clients on behalf of the firm and signing their audited accounts and (iv) signing cheque as per the Order dated 16th December, 2004 and Consent Terms dated 8th September, 2005.

(b) pending the hearing and final disposal of the arbitration, the Respondents, their servants and agents be restrained by an order and injunction of this Hon’ble Court from in any manner publishing or advertising in any form the purported retirement of the Petitioner from the said partnership of M/s. N.M. Raiji & Co..

(c) pending the hearing and final disposal of the arbitration, the Respondents be directed by a mandatory injunction of this Hon’ble Court to withdraw the wrongful notice published by them on 2nd April, 2007 in the said newspaper "Economic Times" and "Bombay Samachar" and in the notice board of M/s. N.M. Raiji & Co.

> (d) For ad-interim reliefs in terms of prayers (a) to (c) hereinabove;
>
> (e) For costs of the Petition.
>
> (f) For such further and other reliefs as the nature and circumstances of the case may require."

Apparently, the said reliefs were asked for on the basis of the various contentions which were canvassed in relation to the various clauses in the partition deed as well as the consequences of enforcement of those clauses by the partners. Perusal of the impugned order discloses that the learned single Judge by merely referring to Clause 12(b) of the partnership deed and holding that the appellant having attained the age of 65 years on 31-3-2007 he stood retired and therefore, no prima face case is made out to seek the reliefs asked for, ruled thus:

> "9. Considering the submissions raised and keeping all points open, I am of the view that the tribunal which is already constituted by some other partner arising out of same partnership deed as consented, by both the parties, the

> present issues and disputes as raised in the petition also referred to the same Arbitrator. All points are kept open including the interpretation of the clauses in the partnership deed in question."

4. Plain reading of the impugned order, therefore, discloses that though various issues were sought to be canvassed, the learned single Judge, without considering the rival contentions in relation to the said issues, directed the parties that those issues shall stand referred to the Arbitrator before whom other disputes between the parties are pending. Such an exercise was not open to the learned single Judge as the reference of the disputes to arbitration was totally beyond the scope of controversy in the matter as also such a reference has to be done by the parties themselves or by the authority as specified under the Arbitration and Conciliation Act, 1996. Being so, the impugned order cannot be sustained and is liable to be set aside and the matter to be remanded to the learned single Judge to consider all the points which are sought to be raised in the Arbitration Petition No.140 of 2007 in accordance with the provisions of law.

5. In the result, the appeal succeeds; the impugned

order is set aside and the matter is remanded to the learned single Judge to consider all the points which are sought to be raised in the Arbitration Petition No.140 of 2007, in accordance with the provisions of law. No order as to costs.

(D.G.Karnik, J.) (R.M.S.Khandeparkar, J.)

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